

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court

Name (under which you were convicted):
Delvon A. Carter

Place of Confinement:
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

Case: 5:18-cv-11495
Judge: Levy, Judith E.
MJ: Morris, Patricia T.
Filed: 05-11-2018 At 02:31 PM
HC CARER VS HUSS (DP)

Prisoner No.:
975708

Petitioner (include the name under which you were convicted)

Respondent (authorized person having custody of petitioner)

DELVON A. CARTER

v. ERICA HUSS, WARDEN

The Attorney General, **Bill Schuette**, of
the State of Michigan

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
3rd Judicial Circuit, Frank Murphy Hall of Justice, 1441 St. Antoine, Detroit, Michigan 48226-2384

(b) Docket or case number (if you know): **2015-008746-01-FJ**

2. (a) Date of judgment of conviction (if you know): **February 10, 2016**

(b) Date of sentencing: **February 26, 2016**

3. Length of sentence: **(1) 21 years to 50 years**

4. In this case, were you convicted on more than one count or of more than one crime?

☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

(1) Second Degree Murder, contrary to Mich. Comp. Laws § 750.317; (2) Robbery Armed, contrary to Mich. Comp. Laws § 750.529; and, (3) Felony Firearm, contrary to Mich. Comp. Laws 750.224b-a.

6. (a) What was your plea? (Check one)

☐ Not guilty ☐ Nolo contendere (no contest)
☒ Guilty ☐ Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? **N/A**

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: **Michigan Court of Appeals**

(b) Docket or case number (if you know): **335697**

(c) Result: **Denied**

(d) Date of result (if you know): **March 14, 2017**

(e) Citation to the case (if you know): **unpublished**

(f) Grounds raised: **Petitioner's Plea should be withdrawn where it was not determined to be made competently.**

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: **N/A**

(2) Docket or case number (if you know): **N/A**

(3) Result: **N/A**

(4) Date of result (if you know): **N/A**

(5) Citation to the case (if you know): **N/A**

(6) Grounds raised: **N/A**

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☐ No

N/A

If yes, answer the following:

(1) Docket or case number (if you know): **N/A**

(2) Result: **N/A**

(3) Date of result (if you know): **N/A**

(4) Citation to the case (if you know): **N/A**

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: **N/A**
- (2) Docket or case number (if you know): **N/A**
- (3) Date of result (if you know): **N/A**
- (4) Nature of the proceeding: **N/A**
- (5) Grounds raised: **N/A**
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion? ☐ Yes ☒ No
- (7) Result: **N/A**
- (8) Date of result (if you know): **N/A**
- (b) If you filed any second petition, application, or motion, give the same information:
 - (1) Name of court: **N/A**
 - (2) Docket or case number (if you know):: **N/A**
 - (3) Date of filing (if you know): **N/A**
 - (4) Nature of the proceeding: **N/A**
 - (5) Grounds raised: **N/A**
 - (6) Did you receive a hearing where evidence was given on your petition, application, or motion? ☐ Yes ☒ No
 - (7) Result: **N/A**
 - (8) Date of result (if you know): **N/A**
- (c) If you filed any third petition, application, or motion, give the same information:
 - (1) Name of court: **N/A**
 - (2) Docket or case number (if you know): **N/A**
 - (3) Date of filing (if you know): **N/A**
 - (4) Nature of the proceeding: **N/A**
 - (5) Grounds raised: **N/A**
 - (6) Did you receive a hearing where evidence was given on your petition, application, or motion? ☐ Yes ☒ No
 - (7) Result: **N/A**
 - (8) Date of result (if you know): **N/A**

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

- (1) First petition: ☐ Yes ☒ No
 (2) Second petition: ☐ Yes ☐ No
 (3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: **I did not know how to appeal the case.**

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

DUE PROCESS REQUIRES PLEA WITHDRAWAL WHERE (A) THE COURT FAILED TO ASCERTAIN DEFENDANT'S MENTAL STATE AT THE TIME OF THE PLEA PROCEEDING, AND (B) THE FACTUAL BASIS FOR THE PLEA IS BASED UPON FALSE INFORMATION. MICH CONST 1963, ART 1, §§ 17, 20; US CONST, AMS VI, XIV.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner has a long mental history that the court and his counsel were aware of, yet at no given time did an evaluation be performed to determine his mental state before being allowed to move forward with accepting the plea.

(b) If you did not exhaust you state remedies on Ground One, explain why: **Not Been Raise in the Lower Courts**

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: **N/A**

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? ☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: **N/A**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion or petition? **N/A** ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? **N/A**

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? **N/A**

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state: **N/A**

Name and location of the court where the appeal was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: **N/A**

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: **N/A**

GROUND TWO:

DEFENDANT'S CONSTITUTIONAL RIGHT'S WERE VIOLATED WHEN THE TRIAL COURT DID NOT DETERMINE WHETHER DEFENDANT WAS COMPETENT AT THE TIME OF SENTENCING. US CONST AM XIV.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The court never made any determination as to whether Petitioner was competent at the time of his sentence.

(b) If you did not exhaust you state remedies on Ground Two, explain why: **Has not yet been raised in the Lower Court.**

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: **N/A**

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? ☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state: **N/A**

Type of motion or petition: **N/A**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion or petition? **N/A**

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? **N/A**

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? **N/A**

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state: **N/A**

Name and location of the court where the appeal was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: **N/A**

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies,

GROUND THREE:

DEFENDANT WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT HIS PLEA AND SENTENCING PROCEEDINGS. US CONST, AM VI; MICH CONST 1963, ART 1, § 20.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appointed plea counsel never requested that Petitioner be given a competency evaluation before badgering him to accept a plea of guilty, nor did he ensure Petitioner was competent at the time of sentencing.

(b) If you did not exhaust your state remedies on Ground Three, explain why: **No yet raised in the Lower Courts**

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: **N/A**

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? ☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: **N/A**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion or petition? **N/A**

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? **N/A**

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? **N/A**

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state: **N/A**

Name and location of the court where the appeal was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: **N/A**

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: **N/A**

GROUND FOUR:

DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL CONSTITUTION WHERE HIS APPELLATE COUNSEL (I) NEGLECTED STRONG AND CRITICAL ISSUES WHICH MUST BE SEEN AS SIGNIFICANT AND OBVIOUS; AND (II) FAILING TO SUPPLY DEFENDANT WITH HIS DISCOVERY. US CONST, AM VI, XIV; MICH CONST 1963, ART 1, §§ 17, 20.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appointed appellate counsel should have raised the four issues that Petitioner needs to raise on a Mich. Ct. R. 6.500 motion.

(b) If you did not exhaust your state remedies on Ground Four, explain why: **First chance to raise the issue**

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: **N/A**

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? ☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: **N/A**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion or petition? **N/A**

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? **N/A**

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? **N/A**

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: **N/A**

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: **N/A**

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: **I-IV**

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: **Claims I-IV**

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed.

Attach a copy of any court opinion or order, if available. **N/A**

(15). Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. **N/A**

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: **Leslie Cooper (P30857), 613 Abbott Street, Detroit Michigan 48226**

(b) At arraignment: **Leslie Cooper (P30857), 613 Abbott Street, Detroit Michigan 48226**

(c) At plea: **Wyatt Harris (P54891), and Harold Collins (P56805), 1280 Strathcona Dr., Detroit Michigan 48203**

(d) At sentencing: **Wyatt Harris (P54891), and Harold Collins (P56805), 1280 Strathcona Dr., Detroit Michigan 48203**

(e) On appeal: **Robert Tomak (P26506), 5840 N. Canton Center Rd. Ste. 290, Canton Michigan 48187**

(f) In any post-conviction proceeding: **N/A**

(g) On appeal from any ruling against you in a post-conviction proceeding: **N/A**

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: **N/A**

(b) Give the date the other sentence was imposed: **N/A**

(c) Give the length of the other sentence: **N/A**

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

Therefore, petitioner asks that the Court grant the following relief:

GRANT the Writ of Habeas Corpus, **ORDER** that it be held in abeyance until all claims have been fully exhausted, or **ORDER** any other relief to which Petitioner may be entitled.

Respectfully Submitted,

Dated: 4-25-18

Delvon Carter
Delvon A. Carter #975708
Petitioner *in Pro Se*
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

VERIFICATION

I, Delvon A. Carter, Petitioner in the above captioned case, hereby swear, with my signature below, that the forgoing is true and accurate and if called upon to testify to such, will do so.

Executed on: 4-25-18

Delvon Carter
Delvon A. Carter #975708*

* NOTICE: This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DELVON A. CARTER,

Petitioner,

v.

ERICA HUSS, Warden

Respondent.

Case No.: _____

Hon.: _____

AFFIDAVIT OF DELVON A. CARTER

I, Delvon A. Carter, Affiant herein, state the following in support of my Motion to Hold Habeas in Abeyance:

1. I am currently incarcerated within the Michigan Department of Corrections and I am being housed at the Marquette Branch Prison, located at 1960 U.S. Hwy. 41 South, Marquette Michigan 49855, and my prison number is: 975708.
2. At the present time, I am receiving assistance from an MDOC Legal Writer, who has perfected all documents for me, in regards to the Eastern District Habeas Form, and this Motion to Hold in Abeyance. Without him assisting me, I would not be able to do any of these documents on my own, because, I am only being granted assistance because I am uneducated, and cannot read or write very well, and have no understanding of the law and its mechanics and I am mentally ill.
3. I am not trying to stall or prejudice the Respondent in any way. I just wish to exhaust all of my constitutional violations before this Court has time to review them.

I, Delvon A. Carter, Petitioner in the above captioned case, hereby swear, with my signature below, that the forgoing is true and accurate and if called upon to testify to such, will do so.

Executed on: 4-25-18

Delvone Carter
Delvon A. Carter, Affiant herein

DELVON A CARTER 975708*
MARQUETTE BRANCH PRISON
1960 U.S. HWY SOUTH
MARQUETTE, MI, 49855



RECEIVED

MAY 11 2018

CLERK'S OFFICE
U.S. DISTRICT COURT

United States District Court
Eastern District of Michigan
Southern District
Theodore Levin United States Courthouse
231 W. Lafayette Ave 564
Det, MI, 48226

CIVIL COVER SHEET FOR PRISONER CASES

Case No. <u>18-11495</u>		Judge: <u>Judith E. Levy</u>		Magistrate Judge: <u>Patricia T. Morris</u>	
Name of 1st Listed Plaintiff/Petitioner: Delvon A. Carter			Name of 1st Listed Defendant/Respondent: Erica Huss		
Inmate Number: 975708			Additional Information:		
Plaintiff/Petitioner's Attorney and Address Information:					
Correctional Facility: Marquette Branch Prison 1960 U.S. Hwy 41 South Marquette, MI 49855 MARQUETTE COUNTY					

BASIS OF JURISDICTION

- ☐ 2 U.S. Government Defendant
☒ 3 Federal Question

ORIGIN

- ☒ 1 Original Proceeding
☐ 5 Transferred from Another District Court
☐ Other:

NATURE OF SUIT

- ☒ 530 Habeas Corpus
☐ 540 Mandamus
☐ 550 Civil Rights
☐ 555 Prison Conditions

FEE STATUS

- ☒ IFP *In Forma Pauperis*
☐ PD Paid

PURSUANT TO LOCAL RULE 83.11**1. Is this a case that has been previously dismissed?**

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____
 Case No: _____
 Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____
 Case No: _____
 Judge: _____